

United States Government

**NATIONAL LABOR RELATIONS BOARD**

Region 9

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Cincinnati, Ohio 45202-3271

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October 13, 2005

Mr. William Miley  
5087 Kentucky Highway 1032 East  
Berry, Kentucky 41003

Re: BUTLER PRODUCTS CORPORATION  
Case 9-RD-2088

Dear Mr. Miley:

Your petition seeking an election among certain employees of the Employer, Butler Products Corporation, has been carefully investigated and considered.

***Decision to Dismiss:*** Based on that investigation, I have concluded that further proceedings are not warranted, and I am dismissing your petition for the following reasons.

Your petition, filed on August 22, 2005, seeks to decertify the Union, the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers International Union, AFL-CIO-CLC, as the bargaining representative of the Employer's production and maintenance employees. I have concluded that your petition may not be processed because support for the petition was gathered and the petition was filed at a time when the Employer was engaging in alleged violations of the National Labor Relations Act.

On August 10, 2005, the Union filed the unfair labor practice charge in Case 9-CA-42246 alleging that the Employer was refusing to bargain in good faith with the Union as the collective-bargaining representative of the Employer's employees in the bargaining unit. The investigation of the charge disclosed that on or about June 30, 2005, the Employer withdrew recognition from the Union as the exclusive representative of its unit employees at a time when there was no showing that the Union was not the majority representative of the employees. The evidence also disclosed that on or about July 5, 2005, the Employer unilaterally instituted wage increases and modifications to the unit employees' health insurance benefits without bargaining to a valid impasse or reaching an agreement with the Union concerning these changes. Finally, the investigation disclosed that on August 1, 2005, the Employer refused to participate in negotiations for a successor contract to replace the agreement that expired on June 12, 2005.

As a result of this investigation, I determined to issue a complaint alleging that the Employer violated Section 8(a)(1) and (5) the Act, unless the Employer agreed to enter into a settlement agreement remedying the conduct. I note that any settlement of this matter would require that the Employer recognize and bargain in good faith with the Union as the exclusive collective-bargaining representative of its unit employees for a reasonable period of time. As a

result, I find that your petition may not be processed at this time and no question concerning the Union's majority status may be raised.

The Board has held that after a formal hearing when an employer has been found to have unlawfully refused to recognize or bargain with an incumbent union, any employee disaffection arising during the course of the unlawful conduct will be presumed to be caused by that conduct. See, *Lee Lumber and Building Material Corp.*, 322 NLRB 175, 177 (1996); *Overnight Transportation Company*, 333 NLRB 1392, 1393 (2001). Absent unusual circumstances, the presumption can be rebutted only if the employer can show that the disaffection arose after it resumed recognizing the union and bargained for a reasonable period of time without committing other unfair labor practices that would adversely affect bargaining. The Board has further held the "reasonable period of time" for bargaining in such a case will be no less than 6 months and that the union's status as the employees' bargaining representative may not be challenged during this time. *Lee Lumber and Building Material Corp.*, 334 NLRB 399 (2001).

The Board has also found that following a settlement agreement containing a provision requiring bargaining, a reasonable period of time must be afforded the parties in which to reach a contract during which time no question concerning representation may be raised. See, *Poole Foundry & Machine Co.*, 95 NLRB 34, 36 (1951), enfd. 192 F.2d 741 (4<sup>th</sup> Cir. 1951), cert. denied 342 U.S. 954 (1952). See also, *King Soopers, Inc.*, 295 NLRB 35, 37 (1989); *VIP Limousine*, 276 NLRB 871, 877 (1985); *AT Systems West, Inc.*, 341 NLRB No. 12, slip op. at pp. 5-6 (2004). This is the case even if the union clearly no longer represents a majority of the employees. *Poole Foundry & Machine Co.*, supra; *AT Systems West, Inc.*, supra. The Board and the courts have recognized that the bargaining requirement imposed by a settlement agreement may impact upon employees' rights to choose their representative for purposes of collective bargaining; however, as noted by the Fourth Circuit Court of Appeals in its decision enforcing the Board's Order in *Poole Foundry & Machine Co.*, 192 F.2d at 743, "[t]hese employees are free to file a decertification petition after the settlement agreement has been in effect a reasonable length of time."

Accordingly, I am dismissing your petition because I find there is a causal connection between the alleged unfair labor practices and the employees' disaffection for the Union given the nature of these unfair labor practices. Further, I find that any remedy for these unfair labor practices will preclude the processing of any petition raising a question concerning the Union's continuing majority status for a reasonable period of time.<sup>1/</sup>

***Your Right to Obtain a Review of Dismissal Action:*** Pursuant to the National Labor Relations Board's Rules and Regulations, any party may obtain a review of this action by filing a request for review with the National Labor Relations Board, 1099 14<sup>th</sup> Street, NW, Washington, DC 20570. If you file a request for review, you must also send a copy to the other parties to this proceeding and to me.

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<sup>1/</sup> Upon final disposition of the unfair labor practice proceedings this matter, you may, if you wish, request that the petition be reinstated. In the event such request is made, the matter will be reconsidered at that time and; if appropriate, the petition reinstated. *Douglas-Randall, Inc.*, 320 NLRB 431 (1995). As the Petitioner in the matter, you are being made a party in interest to the unfair labor practice proceedings, limited solely to receipt of a copy of the Order or other document which finally disposes of the proceedings.

***Request for Review Due Date:*** The request for review must be received by the Executive Secretary for the Board by the close of business at 5:00 p.m. EDST on **October 27, 2005**. However, if you mail the request for review, it will be considered timely if it is postmarked no later than the day before the due date.

***Extension of Time to File Request for Review:*** Upon good cause, the Board may grant special permission for a longer period within which to file a request for review. If you file a request for extension of time with the Executive Secretary in Washington, you must send a copy of your request to the other parties to this proceeding and to me.

***Request for Review Contents:*** The request for review must contain a complete statement setting forth the facts and the reasons that support your request for review of the decision to dismiss the petition. The request for review and any request for extension of time must include a statement that a copy has been served on the other parties to this proceeding and on me and that service has been accomplished in the same or faster manner as that used to serve the Board.

Sincerely,

/s/

Gary W. Muffley  
Regional Director

GWM/rk

cc: Butler Products Corporation  
Attn: Mr. Thomas Kueheman  
General Manager  
103 South Street  
P.O. Box 185  
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Burdzinski, Brinkman, Czarasty & Landwehr, Inc.  
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P.O. Box 41098  
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United Steel, Paper and Forestry,  
Rubber, Manufacturing, Energy,  
Allied-Industrial and Service  
Workers International Union, AFL-CIO-CLC  
Attn: Mr. Emmanuel S. "Spurge" Mason  
Assistant to the Director  
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